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EX PARTE

November 27, 2002

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: *In the Matter of Revision of the Commission's Rules to Ensure Compatibility
With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102

Response to AT&T Wireless Services, Inc. Interim Report, dated October 18,
2002

Dear Ms. Dortch:

Attached is an *Ex Parte* served today on Mr. Barry Ohlson, Chief, Policy Division, Wireless Telecommunications Bureau in CC Docket No. 94-102, in response to AT&T Wireless Services October 18, 2002 Interim Report.

In accordance with FCC Rule 47 C.F.R. §1.49(f), this *Ex Parte* is being filed electronically via the Commission's Electronic Comment Filing System for inclusion in the public record of the above-referenced proceeding pursuant to FCC Rule 47 C.F.R. §1.1206(b)(1).

/s/ Cronan O'Connell



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Wireless Telecommunications Bureau
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445 12th Street, S.W.
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Dear Mr. Ohlson,

On October 18, 2002, AT&T Wireless Service, Inc. ("AWS") filed an Interim Report ("Report") in the above-referenced proceeding with the stated intent of advising the Federal Communications Commission ("Commission") of "events that may affect AWS' ability to proceed with testing and deployment of its Phase II E911 service."¹ Throughout that Report, AWS characterizes Qwest as culpable in undermining AWS' Phase II E911 deployment activities, particularly its planned-for First Office Application ("FOA") in Portland, Oregon. By this filing, Qwest hopes to create a more complete and balanced record regarding the events addressed in AWS' Report.

Qwest, in its capacity as a local exchange carrier ("LEC"), takes seriously the Commission's admonition to work cooperatively with Public Safety Answering Points ("PSAPs") and wireless carriers to successfully facilitate 911/E911 Phase II deployment. In the absence of express rules and regulations detailing LEC obligations in the context of wireless Phase II implementations,² Qwest has worked with PSAPs, wireless carriers and state commissions in good faith to minimize disputes and facilitate deployments.³ Even with the best of intentions and hard work, however, it remains true that wireless E911 Phase II deployment is complex and contentious. AWS' Report bears witness to this.

Qwest has not acted to thwart AWS' anticipated FOA in Portland. As a threshold matter, AWS, not Qwest, selected Portland for AWS' FOA. AWS did not consult with Qwest on its decision. Indeed, AWS announced to Qwest that it wanted to test its E911 Phase II service in Portland even before Qwest had publicly announced to the PSAP community its own general business and tariff framework to support

¹ Report at 1.

² See Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Gary Lytle, Vice President, Policy and Law, Qwest Communications, dated July 29, 2002 ("*Lytle Letter*"), at pp. 1-2, noting that while incumbent local exchange carriers ("ILEC") are "necessarily involved in providing to PSAPs certain of the services and facilities required to support wireless E911". . . "[t]o date the Commission has not imposed on ILECs any special obligations in connection with wireless E911."

³ For example, Qwest did not pursue a tariff structure such as that recently found objectionable. See Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Kathleen B. Levitz, *et al*, dated Oct. 28, 2002 ("*BellSouth Letter*").

wireless 911/E911 Phase II. When AWS initially approached Qwest, Qwest was in the process of finalizing its cost studies and tariff filings in accordance with Oregon state law.

Qwest was aware that its chosen tariff methodology, *i.e.*, charging the PSAPs for the E2 functionality, was going to generate PSAP responses.⁴ At a minimum, Qwest anticipated discussion of the terms and the framework of the service. It expected that, in a number of cases, there would be serious disagreement regarding both the methodology and the pricing. Therefore, Qwest determined that it would test and trial its services only in those circumstances where testing PSAPs were committed to purchasing Phase II service at the end of the trial, under the terms of the tariff. This is eminently reasonable since the PSAP must incur costs to get its infrastructure “Phase II-ready” even in a trial environment. And it is the PSAP that will be the LEC’s primary customer under a wireless 911/E911 Phase II regime, as it is under the 911/E911 wireline regime. If a PSAP is not willing to subscribe to Phase II service on an ongoing basis, trialing Phase II with that PSAP may contribute to a wireless carrier’s own Phase II deployment obligations and benchmarks but it does nothing to contribute to a realized Phase II deployment. Instead such trials waste resources and expenditures, contrary to the Commission’s intent.⁵ This is particularly true if between the time of testing and the time of final deployment, the PSAP changes any of its 911/E911 components or facilities, since that would require another round of testing and associated costs. None of this is warranted since a wireless carrier’s Phase II obligations are not triggered if a PSAP is unwilling to pay the LEC for the necessary services and upgrades.

Once Qwest decided on the final terms of its tariff offering, Qwest began communicating those specifics to affected PSAPs. In light of AWS’ earlier request for a trial, a conference call was held with Qwest, AWS and the Oregon PSAP Coordinator. (That coordinator purchases supporting services for wireless 911/E911 on behalf of all the PSAPs in the state, both Phase I and Phase II.) During that conference call the Oregon PSAP Coordinator made clear that he disputed Qwest’s *existing* tariffed Phase I charges and similarly opposed Qwest’s proposed Phase II offering. Therefore, the Oregon PSAP Coordinator indicated that he was not currently interested in pursuing a trial or test with AWS or Qwest. The Coordinator was clear that, until he received pricing information from Qwest that was acceptable to him, *and* he could determine any other associated customer premises equipment costs for changing to a Phase II Automatic Location Information (“ALI”) format, he did not intend to move forward with Phase II. Shortly after this conference call, the PSAP Coordinator met with the Qwest sales team and he again emphasized that he was not moving forward with Phase II or testing, until he saw a copy of Qwest’s tariff filing; and he had the opportunity to intervene or question the Oregon Commission.

Qwest is not acting to frustrate or delay AWS’ testing and ultimate service roll out. Rather, AWS’ difficulties stem from AWS’ decision to conduct a FOA where the PSAP necessary for the testing will not participate. The fact that part of the reason for the Oregon PSAP Coordinator’s decision not to proceed

⁴ See, *e.g.*, Letter in WT Docket No. 02-46, dated Mar. 28, 2002, regarding Metropolitan 911 Board response to the Commission’s request for comments on Technical and Operational Wireless E911 Issues - Hatfield Inquiry pp. 2-3 (“Wireless Phase II calls must be presented to the dispatcher in exactly the same way as Phase I and wireline 911 calls are presented. This will require carriers to push Phase II data into the ALI database”). *But see BellSouth Letter* at 3, stating emphatically that “upgrades that perform the query functions of the E2 interface are considered ALI database upgrades whose costs are the responsibility of the PSAP.” Despite this clear statement, Qwest continues to expect there will be disputes in this area. And the formal determination may cause PSAPs to forgo moving from Phase I to Phase II, especially where there are significant budget constraints.

⁵ See, *e.g.*, *In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, 16 FCC Rcd. 18982, 18985 ¶ 11 (2001) (Commission objective of ensuring that “none of the parties expends resources unnecessarily”).

with a trial is his dispute with Qwest's tariff -- while certainly something outside of the control of AWS -- does not render Qwest responsible for the current situation.

In its Report, AWS cites to Qwest's response to the *Lytle Letter* as "impl[ying] that [Qwest] had a cost recovery mechanism in place and would be marketing new ALI feature and connectivity products to PSAPs and MPC providers through Individual Case Basis (ICB) pricing."⁶ AWS argues that the filing led it to believe that Qwest was ready to support wireless E911 Phase II immediately. Yet AWS' presumption is not warranted from the language of Qwest's response. Qwest advised the Commission that it would offer its product "through [ICB] pricing, unless required otherwise by a state regulatory authority."⁷ There are many state regulatory authorities that require 911/E911 to be offered through tariffs, and Qwest did not state that tariffs had been filed or approved.

Moreover, it is incorrect to say that Qwest will not trial or test 911/E911 Phase II functionality prior to a tariff being filed or effective. Qwest is willing to proceed with a "pre-turn-up test phase" with a PSAP to trial Phase II through a trial ICB price, in those cases where a PSAP is ready and willing to purchase Phase II service at the conclusion of the trial (either through a permissible ICB arrangement or a tariff). What Qwest has not agreed to do is to test its services supporting wireless Phase II with a PSAP that has no inclination to offer the service thereafter *or* who would offer the service but refuse to pay the tariffed charges because it disputes either their level or the structure. The Oregon PSAP Coordinator, however, made it quite clear that he had not even reached the point of being willing to test.

Qwest has offered to work with AWS to undertake wireless 911/E911 Phase II testing either in Minneapolis, MN or King County, WA, as PSAPs there are willing to purchase Qwest's services at the estimated price Qwest has quoted to them. On more than one occasion, however, AWS has indicated that it is not interested in pursuing such trials.

Qwest hopes that this communication clarifies the record regarding Qwest's activities and involvement in AWS' attempts to deploy its services in Oregon. Should you wish to discuss this matter further, please contact me at the above telephone number or alternatively Cronan O'Connell at 202-429-3121.

Respectfully,

/s/

Kathryn Marie Krause

cc: James Schlichting
Blaise Scinto
Patrick Forster

⁶ AT&T Report at 3.

⁷ Response to Question 4; Excel Spreadsheet, attached to cover letter from Kathryn Marie Krause, Senior Attorney, Qwest, to Ms. Marlene H. Dortch, Secretary, dated Aug. 28, 2002.